

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS**

In re: OHIO EXECUTION
PROTOCOL LITIGATION,

: Case No. 2:11-cv-1016

District Judge Edmund A. Sargus, Jr.
Magistrate Judge Michael R. Merz

This Order relates to Plaintiff James Frazier

SUPPLEMENTAL ORDER REGARDING MOTION TO QUASH

This case is before the Court on non-Party Ohio State University Wexner Medical Center's ("OSUWMC") Motion to Quash the Subpoena *Duces Tecum* propounded by Plaintiff James Frazier on November 12, 2019 (ECF No. 2659). OSUWMC argues that the medical records sought by Frazier's counsel are protected by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Pub. L. 104-191, 110 Stat. 1936, and that OSUWMC has received neither an order from this Court nor the "satisfactory assurance" of Frazier himself such that disclosure is allowed under the applicable regulations (Motion, ECF No. 2659, PageID 131758-60, citing 45 C.F.R. § 164.512(e)(1)(i-ii)). On December 3, 2019, Frazier stated that his counsel and counsel for OSUWMC conferred, as ordered by the undersigned, and agreed that satisfactory assurances could not be provided, due to uncertainty over his intellectual capacity; further, he stated that "there is agreement that a court order is the appropriate vehicle to satisfy the specific concerns of counsel for OSUWMC and counsel for Mr. Frazier." (Memo. in Opp., ECF No. 2671, PageID 132656, 132658).

Any order by the Court authorizing disclosure of medical records would be issued on the condition that all such records be marked as “CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER” pursuant to the July 6, 2018, Protective Order (ECF No. 1830), and, that any such records shall only be filed under seal after proper authorization from this Court has been obtained, in keeping with practice in this consolidated litigation.

Therefore, if OSUWMC wishes to object to Frazier’s above representation, or otherwise set forth its position with respect to production of Frazier’s medical records subject to its Motion to Quash, then it must do so by filing a reply memorandum in support of its Motion no later than December 11, 2019. If OSUWMC agrees with Frazier’s representation, then its counsel must file the Declaration of Compliance with Protective Order (*see* ECF No. 1830, PageID 74386-87) no later than December 11, 2019, and the parties shall submit a Joint Proposed Order governing the scope and procedure of OSUWMC’s disclosure of Frazier’s medical records no later than that date.

OSUWMC’s obligation to comply with the subpoena remains suspended pursuant to the Court’s previous Order (ECF No. 2663).

December 4, 2019.

s/ *Michael R. Merz*
United States Magistrate Judge